# VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION

# ORDER BY CONSENT ISSUED TO

#### WAYN-TEX, INCORPORATED

#### EPA HAZARDOUS WASTE ID No. VAD097423685

## **SECTION A: Purpose**

This is a Consent Order issued under the authority of Section 10.1-1455 of the Code of Virginia between the Virginia Waste Management Board and Wayn-Tex, Incorporated to resolve certain violations of the Virginia Waste Management Act and the Virginia Hazardous Waste Management Regulations.

## **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

- 1. "Va. Code" means the Code of Virginia (1950), as amended.
- 2. "Order" means this document, termed a Consent Order, issued under the authority of the Virginia Waste Management Act.
- 3. "Waste Board" means the Virginia Waste Management Board, a permanent Citizens' Board of

- the Commonwealth of Virginia described in Va. Code §§ 10.1-1401 and 10.1-1184.
- 4. "Wayn-Tex" or "the Company" means the Wayn-Tex, Incorporated facility located at 901 South Delphine Avenue, Waynesboro, Virginia.
- 5. "DEQ" means the Virginia Department of Environmental Quality, an independent administrative agency within the executive branch of the Commonwealth of Virginia as described in Va. Code § 10.2-1183.
- 6. "VRO" means DEQ's Valley Regional Office.
- 7. "Director" means the Director of DEQ, whose powers and duties are described in Va. Code § 10.1-1185.
- 8. "40 CFR" means Title 40 of the Code of Federal Regulations.
- 9. "VHWMR" means the Virginia Hazardous Waste Management Regulations set forth at 9 VAC 20-60-12 *et seq*. The VHWMR at 9 VAC 20-60-260 to -268, -270, -273 and -279 adopt by reference certain provisions of 40 CFR. Citations made herein will be to the relevant section of the VHWMR followed by a reference in brackets to the specific provision of the CFR.
- 10. "LQG" means a large quantity generator of hazardous waste.
- 11. "SQG" means a small quantity generator of hazardous waste.

## **SECTION C: Findings of Facts and Conclusions of Law**

- 1. Wayn-Tex is a manufacturer of primary carpet backing, agricultural bag fabric and geotextile fabric.
- Wayn-Tex is a generator of hazardous waste operating under EPA Hazardous Waste ID No. VAD097423685. Wayn-Tex generates multiple hazardous waste streams including listed and characteristic hazardous wastes.
- 3. On September 21, 1999, DEQ issued a Letter of Noncompliance to Wayn-Tex citing multiple violations of the VHWMR. By letter dated October 29, 1999, Wayn-Ten responded to the Letter of Noncompliance indicating that all violations cited would be resolved by November 15, 1999.
- 4. On February 26, 2001, staff from DEQ's Waste Compliance Program conducted a hazardous waste compliance inspection of the Wayn-Tex facility. Based on observations made during the inspection, on May 9, 2001, DEQ issued Notice of Violation No. WS-01-05-VRO-023 to

Wayn-Tex alleging the following apparent violations of the VHWMR:

- (1) Storage of hazardous waste by a Large Quantity Generator for greater than 90 days without a permit in apparent violation of Va. Code § 10.1-1426(a), 9 VAC 20-60-262 of the VHWMR [40 CFR 262.34(a)] and 9 VAC 20-60-264 of the VHWMR [40 CFR 264];
- (2) Failure to assign a unique 5 digit number to a manifest dated March 22, 2000, in apparent violation of 9 VAC 20-60-262 of the VHWMR [40 CFR 262 Appendix A];
- (3) Failure to submit exception reports for manifests which were not fully executed (manifest document nos. 00322 and 05879) in apparent violation of 9 VAC 20-60-262 of the VHWMR [40 CFR 262.42];
- (4) Failure to mark containers of hazardous waste with the date upon which each period of accumulation began in apparent violation of 9 VAC 20-60-262 of the VHWMR [40 CFR 262.34(a)(2)];
- (5) Failure to label containers of hazardous waste with the words "Hazardous Waste" in apparent violation of 9 VAC 20-60-262 of the VHWMR [40 CFR 262.34(a)(3)];
- (6) Failure to label containers located in satellite accumulation areas with the words "Hazardous Waste" in apparent violation of 9 VAC 20-60-262 of the VHWMR [40 CFR 262.34(c)(1)(ii)];
- (7) Accumulation of more than one drum of the same type of hazardous waste in a satellite accumulation area in apparent violation of 9 VAC 20-60-262 of the VHWMR [40 CFR 262.34(c)(1)];
- (8) Failure to attach land disposal restriction ("LDR") forms to related manifest documents in apparent violation of 9 VAC 20-60-268 of the VHWMR [40 CFR 268.7(a)(1)];
- (9) Failure to keep containers of hazardous waste closed except when adding or removing waste in apparent violation of 9 VAC 20-60-262 of the VHWMR [40 CFR 265.173 as referenced by 40 CFR 262.34(d)(2)];
- (10) Failure to inspect the < 90 day storage area on a minimum frequency of once per week in apparent violation of 9 VAC 20-60-262 of the VHWMR [40 CFR 265.174<sup>1</sup> as referenced by 40 CFR 262.34(d)(2)];

<sup>&</sup>lt;sup>1</sup> NOTE: This was incorrectly cited in Notice of Violation No. WS-01-05-VRO-023 as 40 CFR 264.174.

- (11) Failure to have a written personnel training program in apparent violation of 9 VAC 20-60-262 of the VHWMR [40 CFR 265.16(d)(3) as referenced by 40 CFR 262.34(a)(4)];
- (12) Failure to provide an annual personnel training program refresher course related to hazardous waste management in apparent violation of 9 VAC 20-60-262 of the VHWMR [40 CFR 265.16(c) as referenced by 40 CFR 262.34(a)(4)];
- (13) Failure to maintain a list of the job titles for each position at the facility related to hazardous waste management in apparent violation of 9 VAC 20-60-262 of the VHWMR [40 CFR 265.16(d)(1) as referenced by 40 CFR 262.34(a)(4)];
- (14) Failure to maintain written job descriptions of every position listed under 40 CFR 265.16(d)(1) in apparent violation of 9 VAC 20-60-262 of the VHWMR [40 CFR 265.16(d)(2) as referenced by 40 CFR 262.34(a)(4)];
- (15) Failure to have a written training program that includes information regarding hazardous waste management procedures that are relevant to the applicable personnel's position in apparent violation of 9 VAC 20-60-262 of the VHWMR [40 CFR 265.16(a)(2) as referenced by 40 CFR 262.34(a)(4)];
- (16) Failure to have a written training program that addresses maintenance of facility emergency and monitoring equipment and for utilizing facility communications and alarm systems in apparent violation of 9 VAC 20-60-262 of the VHWMR [40 CFR 265.16(a)(3) as referenced by 40 CFR 262.34(a)(4)];
- (17) Failure to train facility personnel within six months of their employment to the facility or transfer to a new position in apparent violation of 9 VAC 20-60-262 of the VHWMR [40 CFR 265.16(b) as referenced by 40 CFR 262.34(a)(4)];
- (18) Failure to maintain records which document that the training required under 40 CFR 265.16 has been provided in apparent violation of 9 VAC 20-60-262 of the VHWMR [40 CFR 265.16(e) as referenced by 40 CFR 262.34(a)(4)];
- (19) Failure to maintain adequate aisle space in the < 90 day storage area and failure to demonstrate that the aisle space is not needed in apparent violation of 9 VAC 20-60-262 of the VHWMR [40 CFR 265.35 as referenced by 40 CFR 262.34(a)(4)];
- (20) Failure to submit an updated contingency plan to the local hospital in apparent violation of 9 VAC 20-60-262 of the VHWMR [40 CFR 265.53 as referenced by 40 CFR

262.34(a)(4)];

- (21) Failure to have an updated contingency plan which describes arrangements with local and state emergency response agencies in order to coordinate emergency response activities in apparent violation of 9 VAC 20-60-262 of the VHWMR [40 CFR 265.52 as referenced by 40 CFR 262.34(a)(4)];
- (22) Failure to have an updated contingency plan which lists all Wayn-Tex staff authorized to act as emergency coordinators and which lists one primary emergency coordinator in apparent violation of 9 VAC 20-60-262 of the VHWMR [40 CFR 265.52 and 55 as referenced by 40 CFR 262.34(a)(4)];
- (23) Failure to familiarize local emergency authorities and hospitals with the hazards associated with the Wayn-Tex operation or arranged agreements with state emergency authorities in apparent violation of 9 VAC 20-60-262 of the VHWMR [40 CFR 265.37 as referenced by 40 CFR 262.34(a)(4)];
- (24) Failure to specify whether the facility's mercury-containing light bulbs would be managed as hazardous waste or universal waste in apparent violation of 9 VAC 20-60-1495 of the VHWMR;
- (25) Failure to provide suitable spill cleanup materials for mercury-containing wastes in apparent violation of 9 VAC 20-60-1505.C.2 of the VHWMR;
- (26) Failure to label containers of waste mercury light bulbs with hazardous waste or universal waste convention in apparent violation of 9 VAC 20-60-1505.C.4 of the VHWMR; and,
- (27) Failure to have a written waste minimization plan and failure to describe waste minimization efforts in apparent violation of 9 VAC 20-60-262 [40 CFR 262.20(a)] and 9 VAC 20-60-264 [40 CFR 264.75].
- 5. On July 8, 2001, representatives of DEQ and Wayn-Tex met in an informal settlement conference at VRO. At the settlement conference, a Wayn-Tex representative submitted information demonstrating that the violations cited above under Paragraph Nos. 4(1) through 4(7), 4(9), 4(10) and 4(24) through 4(26) had been satisfactorily resolved.
- 6. During the July 8, 2001, settlement conference, DEQ staff explained to the Wayn-Tex representative that the violations cited above under Paragraph Nos. 4(11) through 4(18), 4(20) through 4(23) and 4(27) are applicable to LQGs. Based on conditions at Wayn-Tex observed

by DEQ staff during the February 26, 2001, inspection, Wayn-Tex was operating as a LQG and was inspected as such. During the July 8, 2001, settlement conference, DEQ staff explained to the Wayn-Tex representative that with some changes in its hazardous waste management practices, Wayn-Tex appeared to be able to operate under SQG status. DEQ staff advised Wayn-Tex to perform an analysis of its waste generation and management practices in order to determine if it could operate as a SQG. DEQ staff advised Wayn-Tex that the injunctive relief set forth under the Order would be based on the Company's determination of generator status.

7. The violation cited above under Paragraph 4(8) pertains to the Company's failure to attach two LDR forms to related manifest documents (AR-1094799 and 00999). By submittal dated July 13, 2001, Wayn-Tex provided a copy of the LDR form for manifest document No. AR-1094799. Wayn-Tex also explained that it had searched for the LDR form for manifest document No. 00999 and had requested a copy from the final treatment, storage and disposal facility but the document could not be traced or produced. Through the July 13, 2001, submittal, Wayn-Tex demonstrated compliance with the violations cited above under Paragraph Nos. 4(19) and 4(24) through 4(26). In this letter, Wayn-Tex indicated that it had performed an analysis of its generator status and had determined that the Company would be able to operate as a SQG and was evaluating its ability to attain Conditionally Exempt Generator status. The Order is structured such that no injunctive relief will be required for the violations cited above under Paragraph Nos. 4(11) through 4(18), 4(20) through 4(23) and 4(27) given that they are not applicable to SQGs; however, these same violations have been factored into the civil charge calculated for settlement of this case given that Wayn-Tex was operating as a LQG during DEQ's February 26, 2001, inspection of the Company.

#### **SECTION D: Agreement and Order**

Accordingly the Board, by virtue of the authority granted it pursuant to Va. Code §10.1-1455, orders Wayn-Tex, and Wayn-Tex voluntarily agrees that:

- 1. Wayn-Tex shall not treat, store, or dispose of hazardous waste at any facility owned, operated, leased, or otherwise controlled by Wayn-Tex, except in accordance with the VHWMR or a permit issued by DEQ for such activity or if Wayn-Tex seeks and is granted an emergency hazardous waste management permit under 9 VAC 20-60-1050.A. for such activity;
- 2. Wayn-Tex shall pay a civil charge of \$21,000 in settlement of the violations cited in this Order.
- 3. \$300 of this civil charge shall be paid within 30 days of the effective date of this Order. The payment shall include Wayn-Tex's Federal ID number and shall indicate that the civil charge is pursuant to the Wayn-Tex Order. Payment shall be by check, certified check, money order, or cashier's check payable to 'Treasurer of the Commonwealth of Virginia' and sent to:

Receipts Control
Department of Environmental Quality
P. O. Box 10150
Richmond, Virginia 23240

- 4. \$20,700 of this civil charge shall be satisfied upon completion by Wayn-Tex of a Supplemental Environmental Project (SEP) pursuant to Virginia Code 10.1-1186.2 and as described in Appendix A of this Order.
- 5. By signing this Order, Wayn-Tex certifies that it has not commenced performance of the SEP before DEQ identified the violations in this Order and approved the SEP.
- 6. In the event that the SEP is not performed as described in Appendix A, upon notification by the Department, Wayn-Tex shall pay the amount specified in Paragraph 4 above within 30 days of such notification according to the procedures specified in Paragraph 3 above, unless an alternate project has been agreed upon by the parties.

#### **SECTION E: Administrative Provisions**

- 1. The Board may modify, rewrite, or amend the Order with the consent of Wayn-Tex, for good cause shown by Wayn-Tex, or on its own motion after notice and opportunity to be heard.
- 2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in a Letter of Noncompliance issued to Wayn-Tex by DEQ on September 21, 1999, and in Notice of Violation No. WS-01-05-VRO-023 issued to Wayn-Tex by DEQ on May 9, 2001. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
- 3. For purposes of this Order and subsequent actions with respect to this Order, Wayn-Tex admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
- 4. Wayn-Tex consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

- 5. Wayn-Tex declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
- 6. Failure by Wayn-Tex to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
- 7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
- 8. Wayn-Tex shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Wayn-Tex shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Wayn-Tex shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Wayn-Tex intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns,

- jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Wayn-Tex. Notwithstanding the foregoing, Wayn-Tex agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Wayn-Tex. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Wayn-Tex from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
- 12. By its signature below, Wayn-Tex voluntarily agrees to the issuance of this Order.

And it is so ORDERED this	_day of	, 2002.
		Robert G. Burnley, Director Department of Environmental Quality
Wayn-Tex voluntarily agrees to the	he issuance of this	Order.
	By:	
	Date:	
Commonwealth of Virginia		
City/County of		
The foregoing document was sign	ned and acknowled	lged before me this _ day of
, 2002, by		
	(na	me)
· · · · · · · · · · · · · · · · · · ·	-Tex, on behalf of	the Company.
(title)		

	Notary Public
My commission expires:	

# APPENDIX A SUPPLEMENTAL ENVIRONMENTAL PROJECT WAYN-TEX, INCORPORATED

- 1. The Supplemental Environmental Project to be performed by Wayn-Tex is the replacement of glued sandpaper coated pull rolls in 129 of its looms with wire coated pull rolls.
- 2. The cost of the SEP to Wayn-Tex shall not be less than \$20,700. In the event that the final cost of the SEP is less than this amount, Wayn-Tex shall pay the remainder of the amount to the Commonwealth of Virginia, unless otherwise agreed to by the Department.
- 3. Wayn-Tex acknowledges that it is solely responsible for completion of the SEP project. Any delegation of funds, tasks, or otherwise by Wayn-Tex to a third party, shall not relieve Wayn-Tex of its responsibility to complete the SEP as contained in this Order.
- 4. The SEP shall be completed by October 15, 2004, by Wayn-Tex.
- 5. Wayn-Tex shall provide the Department with progress reports of the SEP on October 15, 2002, April 15, 2003, October 15, 2003, and April 15, 2004.
- 6. Wayn-Tex shall submit verification to the Department in the form of a Final SEP Report within 30 days of the project completion date. The Final SEP Report shall identify the final overall cost of the SEP and shall include invoices or other documentation of project costs. The Final SEP Report shall also document labor costs associated with the SEP and shall be signed by the Chief Financial Officer of Wayn-Tex.
- 7. In the event that Wayn-Tex publicizes the SEP or the results of the SEP, Wayn-Tex shall state in a prominent manner the project is part of a settlement for an enforcement action.
- 8. The Department has the sole discretion to determine whether the SEP has been completed in a satisfactory manner.